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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) No. 273 of 2007

PETITIONER : R.K.Mishra

VERSUS

RESPONDENTS : State of Chhattisgarh & Others

WRIT PETITION (S) No. 274 of 2007

PETITIONER : Shahid Ali

VERSUS

RESPONDENTS : State of Chhattisgarh & Others

Post for order on 16 -7-2007

Sd/-
Satish K. Agnihotri
Judge

16 -7-2007

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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) No. 273 of 2007

PETITIONER : R.K.Mishra, S/o Late Shri N.Mishra, Aged about 43 years, Presently working as Sub-Inspector Police, P.S. Gorella, District Bilaspur (C.G.)

VERSUS

RESPONDENTS :
1) State of Chhattisgarh – Through the Secretary, Home Department, D.K.S. Bhavan, Raipur (C.G.)
2) The Additional Chief Secretary, Home Department, State of Chhattisgarh, Raipur (C.G.)
3) The Director General of Police, State of Chhattisgarh, Police Head Quarter, Raipur (C.G.)
4) The Inspector General of Police, Bilaspur Range, Bilaspur (C.G.)
5) The Superintendent of Police, Bilaspur, Bilaspur (C.G.)

WRIT PETITION (S) No. 274 of 2007

PETITIONER : Shahid Ali, S/o Zakir Ali, Aged about 52 years, Inspector, P.S. Kota, Distt. Bilaspur (C.G.), R/o Kota, Distt. Bilaspur (C.G.)

VERSUS

RESPONDENTS :
1) State of Chhattisgarh – Through the Secretary, Home Department, D.K.S. Bhavan, Raipur (C.G.)
2) The Additional Chief Secretary, Home Department, State of Chhattisgarh, Raipur (C.G.)
3) The Director General of Police, State of Chhattisgarh, Police Head Quarter, Raipur (C.G.)
4) The Inspector General of Police, Bilaspur Range, Bilaspur (C.G.)
5) The Superintendent of Police, Bilaspur, Bilaspur (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

(SB : Hon'ble Justice Shri Satish K. Agnihotri)

Shri P. Diwakar, Senior Advocate with Shri Adil Minhaj, Advocate for the petitioners.

Shri A. S. Kachwaha, Government Advocate for the respondents/State.

ORDER

(Passed on this 16th day of July, 2007)

1. Writ Petition No. 273 of 2007, filed by Shri R. K. Mishra, working as Sub-Inspector, Police Station – Gorella, District - Bilaspur (hereinafter referred to as 'the first petitioner') and Writ Petition No. 274 of 2007

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filed by Shri Shahid Ali, working as Inspector, posted as Station House Officer, Police Station Kota, District- Bilaspur (hereinafter referred to as 'the second petitioner'), arise from the common impugned order dated 30.12.2006 passed by the respondent No.2, whereby the first petitioner was transferred to Jagdalpur and the second petitioner was transferred to Beejapur. Thus, both the petitions are being disposed of by a common order.

2. The indisputable facts in nutshell are that the first petitioner was transferred from Reserved Center, Bilaspur to Police Station Gourella and second petitioner was transferred from Police Station Masturi to Police Station Kota vide order dated 9.10.2006 (Annexure P/1). Subsequently, according to learned counsel for the petitioners, both the petitioners were transferred on account of the mid-term Legislative Assembly Election held on 4.12.2006, wherein the candidate of the ruling party lost the election, vide impugned order dated 30.12.2006, passed by the respondent No.2 i.e. the Additional Chief Secretary (Home), to faraway naxalite affected places.

3. Being aggrieved, the petitioners have filed these two petitions separately on the ground that the impugned transfer is actuated by malice on the part of the ruling party. The next contention of the petitioners was that both the petitioners have hardly completed 80 days at the old place of posting which is also contrary to the transfer policy of the State Government.

4. Shri P. Diwakar, learned Senior counsel with Shri Adil Minhaj, learned counsel, appearing for the petitioners, relying on several newspaper clippings, wherein it was stated that the Bilaspur Police was punished

by the ruling party for defeat in the hustings at Kota, would submit that there was no complaint against the petitioners and there was no reason to victimize the petitioners for defeat in the election, of the ruling party. Learned counsel for the petitioners, raising the above grounds, sought for quashing of the impugned transfer order dated 30.12.2006.

5. On the contrary, Shri A. S. Kachwaha, learned Government Advocate, appearing for the respondents/State would submit that there is no basis to allege that the impugned transfer was caused due to political considerations. The impugned transfer order clearly indicates that along with the petitioners, who were posted in Bilaspur, several other persons were also transferred to other districts and there was no malice as alleged by the petitioners. The transfer has been made in the public interest and due to the administrative exigency. It was further contended that as per the transfer policy for the year 2006-2007, the transfer order was passed in coordination, therefore the allegation of violation of the transfer policy is baseless and without any factual background. The petitioners are competent officers and as such, their services were required in district Jagdalpur and Beejapur, as there was severe law and order problem.

6. Having hearing learned counsel for the parties, I have perused the pleadings, documents appended thereto and the original proceedings of the Government which was supplied in the course of the argument.

7. It appears that the transfer of the petitioners was initiated by the Home Minister which was approved by the Chief Minister, as required under the transfer policy 2006-2007. In the notings, it is not found that the transfers of the petitioners were actuated by any other extraneous

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considerations. It appears that the transfer order was passed in the public interest and due to the administrative exigency. The contentions of learned counsel for the petitioner that the transfer of the petitioners was made due to the defeat of the ruling party candidate in the mid-term assembly election at Kota, is not supported by any document, except some newspaper clippings, which cannot be the basis for establishing the fact that there was any malice or colourable exercise of powers in transferring the petitioners. Thus, the same deserves to be rejected. It is the prerogative of the State to decide who should serve where. It is not the vested right of any employee in the State to insist that he should be allowed to serve at a particular place or any particular post.

8. With regard to the second contention that the petitioners have served hardly for 80 days at the old place of posting, this does not fall within the purview of "frequent transfers" because the petitioners were earlier posted sufficiently for a long period at a particular place and one transfer, within 80 days, in public interest and due to the administrative exigency, cannot be condemned as 'frequent transfers'.

9. This Court, vide order dated 19.1.2007, directed to maintain status quo with regard to the posting of the petitioners, as obtained on that day. It was brought to the notice of this Court that the Senior Superintendent of Police, Bilaspur, flouting the interim order of this Court, relieved the petitioners from the old place of posting to join the new place of posting. In this regard a notice was issued vide order dated 16.3.2007 passed by this Court. The Superintendent of Police, Bilaspur has filed an affidavit on 27.3.2007 indicating that the ex-parte relieving orders were passed on 10.1.2007 as the first petitioner had proceeded on leave

for three days on 7.1.2007 and the second petitioner proceeded on leave from 1.1.2007 on the ground of ill health, therefore they were not available on duty on 10.1.2007. The interim order dated 19.1.2007 passed by this Court was communicated to the Superintendent of Police on 24.1.2007. There was no violation of the interim order passed by this Court. Thus, it cannot be held that there was any deliberate attempt on the part of the officers to defy or disobey the order passed by this Court.

10. The Supreme Court in the case of **State of U.P. and another Vs. Siya Ram and another**[1] has observed as under.

> "..... No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place of place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan."

11. The Supreme Court in the case of **Rajendra Roy Vs. Union of India and another**[2], has observed as under:

> "....it may not be always possible to establish malice in fact in a straight-cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there

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must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions....."

12. In the case of **Gautam Prasad Naik Vs. State of C.G. & others**[3] this Court held as under:-

"6. .....it is well settled principle of law that transfer is an incidence of service and it is for the employer to decide as to where a particular officer/employee be posted keeping in view public interest as well as administrative exigency. This Court has limited jurisdiction to interference in the transfer matter and this Court can interfere only in the cases of proved mala fide, non-competence of authority passing the transfer order and transfer order not being in conformity with the rules and regulations. ...."

13. In view of the foregoing discussions, I do not find any merit in both the petitions to interfere with the transfer order dated 30.12.2006. Both the petitions deserve to be and are hereby dismissed. No order asto costs.

Sd/-
Satish K. Agnihotri
Judge

2004 7 S.C.C. 405[1]
AIR 1993 SC, 1236[2]
2007 (2) C.G.L.J. 64[3]

Thakur